

EXHIBIT I



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Transcript of Nancy Dunham

Date: April 17, 2023

Case: Strickland -v- United States of America, et al.

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FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

-----X
CARYN DEVINS STRICKLAND, :
Plaintiff, :
v. : Case No.
UNITED STATES OF AMERICA, : 1:20CV66
et al., :
Defendants.:

-----X

Deposition of NANCY DUNHAM
Conducted Virtually
Monday, April 17, 2023
2:08 p.m. EST

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Pages: 1 - 202
Reported by: Marney Alena Mederos, RPR, CRR

1 Deposition of NANCY DUNHAM, conducted
2 virtually.

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6 Pursuant to subpoena and notice, before
7 Marney Alena Mederos, Registered Professional
8 Reporter, Certified Realtime Reporter, and
9 Notary Public in and for the State of Maryland.

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Transcript of Nancy Dunham
Conducted on April 17, 2023

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1 your recollection, let me know.

2 A Okay.

3 Q But if you can remember back -- I know
4 this is a couple years ago, do you remember when
5 you first encountered the Plaintiff?

6 A I do. I remember, because it was not
7 your usual situation.

8 I received a phone call -- and I
9 believe it was in late 2018, so that was six years
10 ago -- from a senior -- a senior member of the
11 AO staff who had, I believe, just retired. She
12 was one of the three department heads.

13 I knew her very well, and she had
14 pre- -- before I was hired, she had previously
15 served in an EEO role and had advised the director
16 and the deputy director. When I came on board,
17 she relinquished those duties.

18 So that was -- her name was Laura
19 Minor, and she called me and said will you talk to
20 an employee -- a judicial employee in one of our
21 districts who has some questions about sexual
22 harassment? I have talked to her, and I think she
23 needs to talk to you, and I said of course.

24 And she said, now, she may not want to
25 give you her name, so she will call you and tell

1 you that she is the employee that talked to me,
2 and if you could talk to her about her situation,
3 I would really appreciate it.

4 And that's how I first talked to the
5 Plaintiff on the phone. We had, I believe, a very
6 long conversation, because she was very articulate
7 and remembered facts very well, and so I think we
8 talked the first time for maybe an hour and a
9 half. And, again, I didn't know who she was, I
10 didn't know where she was, and that was the first
11 conversation.

12 Q Just so I understand, you didn't --
13 even the entire time you talked to her for an hour
14 and a half, you didn't know who she was?

15 A I didn't know her name at that time. I
16 knew -- I knew her general employment situation.
17 I knew that she worked for one of the public
18 defender offices, but I didn't know which one, and
19 I remember that I looked at the area code from her
20 cell, and it was not -- as it turned out, it was
21 an area code from a previous location.

22 Like, my cellphone reads 301. Well, I
23 no longer live in Bethesda, Maryland. So I
24 didn't -- I did not have any personal information
25 about her. I didn't know who she was. I didn't

1 A I believe -- I believe it was late
2 2018, and I took -- I -- you know, I took notes,
3 so I -- I, you know, documented the conversation
4 without a lot of specifics, but I -- you know, I
5 know that there's a record that exists that would
6 say precisely when I talked to her for the first
7 time, but my memory tells me it was late 2018.

8 (Discussion off the record.)

9 BY MS. McMAHON:

10 Q So if I -- if I told you that the
11 conversation was around July of 2018, would that
12 track with what you remember?

13 A It would.

14 Q Okay. So you had this phone call with
15 Plaintiff -- or with Caryn on July -- in July of
16 2018.

17 And can you give us a little more
18 detail about what you discussed besides for her
19 personal characteristics? Did she talk about --
20 did she tell you about what her perception of the
21 sexual harassment was?

22 A She did. She -- she provided me --
23 again, she had a very good recollection of facts.
24 When I asked her questions, she was able to fully
25 answer the questions, and by the time that first

1 phone call was over, I had a very good sense of
2 what was going on.

3 Q What did she say about her allegations?

4 A Again, I'm -- I'm looking back, like,
5 five, six years, but she was uncomfortable -- made
6 uncomfortable by one of her senior managers who at
7 the time she was hired made some public statements
8 about how hot she was and -- and, again, this is
9 what she told me in detail -- and how he was
10 clearly interested in her either romantically or
11 sexually.

12 I don't believe -- I know that she was
13 in a relationship. I don't think she was married
14 at that time. I know that the individual at issue
15 was ten years older than she was and married, but
16 that immediately concerned me, and so she -- she
17 told me about the situation, she told me about his
18 desire to control her, which is very common in
19 this type of situation, and wanted to mentor her.

20 So when I heard her story for the first
21 time, her -- her -- her situation, it was
22 concerning. I felt like I wanted to know more
23 about it, but it concerned me.

24 Q You mentioned that she -- that Caryn
25 told you he was romantically interested in her.

1 Did she give you specific examples of
2 why she thought that?

3 A Well, he wanted to spend a lot of time
4 with her. He made comments, I believe, to other
5 employees about how hot she was, and he sort of
6 self-appointed himself as her mentor and would,
7 again, do a number of things that when we
8 discussed the case at the AO we were concerned
9 about because it -- it looked like he wanted to
10 control her, which is very common.

11 Q What were those other number of things
12 besides for the comments to others saying that she
13 was hot?

14 A I remember that she had a meeting that
15 she felt an obligation to attend, and he had
16 something that he wanted her to do, and so he sort
17 of blew up and was very angry, and -- and I
18 remember telling that to some of the people at the
19 AO, and -- and they -- their comment was, well,
20 that's a very bad sign because this is what we see
21 in a sexual harassment case, the desire to
22 control.

23 Q So besides for him telling others that
24 she's hot and then blowing up at her at the
25 meeting, was there anything else that she

1 mentioned that would indicate he was interested in
2 her romantically?

3 A Well, he -- he asked her, I think,
4 repeatedly -- I -- I think it goes beyond one
5 time -- to go out for drinks after work, he would
6 show up in the late evening in her workplace and
7 offer her rides home, things that were a little
8 atypical given the -- the parameters of their
9 relationship.

10 Q And if I -- if I told you this -- that
11 the man was named J.P. Davis, would that ring a
12 bell?

13 A That does ring a bell. I couldn't have
14 told you his name, but yeah.

15 Q Had you met J.P. Davis before?

16 A Never.

17 Q Had you contacted him or talked to him
18 throughout this process?

19 A Never.

20 Q So at that point, at the time of this
21 initial conversation, all you knew about the
22 allegations were what was based on what Caryn had
23 told you during that call? It wasn't from Laura
24 Minor or anyone else?

25 A It was primarily at that time of the

1 first call from what Caryn had said.

2 I also then talked to other officials
3 at the AO who were familiar with the situation,
4 and so I did get some additional facts, especially
5 as the months went on, from others who, I guess,
6 did talk to Mr. Davis or to others in that
7 district and learned a bit about how that office
8 functioned.

9 Q Who else did you talk to in the AO?

10 A I believe I talked to -- let's see,
11 what was her name?

12 All I can say conclusively is to other
13 senior managers who had official duties related to
14 the office where Caryn worked.

15 Q You don't remember anyone specific?

16 A I -- I can see their faces, but I -- I
17 could not tell you their names. It's just been
18 too long.

19 Q No problem.

20 And once -- after this initial phone
21 call, once Caryn told you this, did you
22 immediately go to the other AO officials to
23 discuss this with them?

24 A I believe that I did. I may have
25 waited for -- we -- we set up another call. I may

1 have waited till I got more information, but I was
2 immediately concerned, and I thought it was
3 prudent for me to advise my managers about what
4 was going on. Now, I'm talking about primarily
5 the deputy director at that point.

6 I later talked to the director about
7 the matter, but initially I talked to lawyers in
8 my office, I talked to managers who had duties
9 related to North Carolina, and I talked to -- I
10 felt a need to tell the deputy director what was
11 going on.

12 This was a time when, you know, sexual
13 harassment had hit the news, the Harvey Weinstein
14 case, there were a number of high-profile cases
15 that were hitting the news, and it was something
16 that the AO was very interested in.

17 So I was asked to do training on sexual
18 harassment, which I did, and we -- we started to
19 collect more information about allegations that
20 had occurred throughout the judiciary. There was
21 a Ninth Circuit judge that was of some concern,
22 and there was a lawsuit that followed from that.

23 So it -- it was newsworthy at that
24 time, and so I realized there was, you know, some
25 potential risk for the judiciary because of all

1 that publicity about other cases.

2 Q Can you describe what you told those
3 AO officials about the sexual harassment? What --
4 what type of information were you passing on?

5 A Well, I didn't tell them a lot because,
6 first of all, it was important for me to protect
7 her privacy, so I talked about it in generalities.
8 I said judicial employee. I may have told the --
9 the region.

10 I probably did tell the deputy director
11 of the region, because she had worked in the field
12 before she was the deputy director, and she knew a
13 lot of people that were involved in the courts.
14 So -- and what I told them was a -- a more general
15 version of what I just told you I was concerned
16 about.

17 Q Did you take any steps to verify what
18 Caryn had told you?

19 A Well, as I said, I did talk to some
20 officials that were familiar with that particular
21 district. I believe I called some of the
22 individuals who would have, for example, duties
23 related to processing her complaint when it was
24 eventually filed. I think we talked to -- my --
25 my -- one of my senior lawyers and I talked to

1 impression was that if she moved to another office
2 that she would not have the physical contact and
3 the proximity with Mr. Davis and that she thought
4 that could resolve things.

5 Q And --

6 A I'm always looking for how might the
7 situation be better for everyone, which is the way
8 you typically settle a case that -- where there
9 are workplace disputes or problems, and so I
10 believe she talked to me about Asheville would be
11 a better fit and getting her away from him.

12 Q Do you remember why Caryn would have
13 written that you are already uncomfortable with
14 the Asheville piece?

15 A Probably because of the fact that I
16 told her candidly what my impressions were, that
17 there were aspects of her situation that were
18 classic sexual harassment and that, you know, I --
19 I was concerned for her.

20 Occasionally, you know, people are
21 actually in physical danger, and there were some
22 very subtle signs of that in terms of late-night
23 hanging around her when no one else was around.
24 And so, yes, I was uncomfortable, and I felt I
25 needed to do something as soon as possible.

1 those two managers.

2 Q So if we could look again at Exhibit
3 Number 3, and the -- the second -- so the first
4 bullet down says, "she talked to deputy director."

5 A Uh-huh.

6 Q And then the second bullet says,
7 "request immediate transfer to Asheville office;
8 make sure he considers it."

9 A Uh-huh. Yes.

10 Q And then the third bullet says, she has
11 not talked to any other -- I think it says
12 manager, I'm not sure -- in FPD, but will tell
13 Cait Clarke; Clarke will make call to Tony -
14 should grant request.

15 Is that right?

16 A Yes.

17 Q So did you think that Cait Clarke would
18 order Tony to grant her request -- to grant
19 Caryn's request to transfer to Asheville?

20 A No. Cait Clarke I don't believe had
21 any authority to order the public defender to do
22 anything, but the -- I -- I took that conversation
23 to -- you know, to make a suggestion or to offer
24 assistance in resolving the situation.

25 Q Did you and Caryn either in this call

1 or before discuss her move from be- -- from being
2 a research and writing attorney to being an
3 Assistant federal defender?

4 A It sounds familiar, but I cannot -- I
5 cannot remember exactly a conversation like that.

6 Q Do you remember in this conversation on
7 August 3rd discussing -- appointing some sort of
8 fact-finder to investigate her claims?

9 A Well, I would not have had the
10 authority to appoint a fact-finder. I think
11 the -- the judiciary process would have started
12 with counseling, and the counselor could have done
13 some informal fact-finding. I do remember that
14 happening at some point.

15 MS. McMAHON: Sophia, if you'll scroll
16 down to the bottom of page 1.

17 AV TECHNICIAN: (Technician complies.)
18 BY MS. McMAHON:

19 Q It says in the last bullet, she told
20 Lee Ann very credible - we can't do everything
21 without fact-finder.

22 A True.

23 Q What did you mean by that?

24 A Well, I'm assuming what I meant, and it
25 would have made sense in this situation, is we

1 Q So at the very top of that page --

2 MS. McMAHON: Sophia, if you could
3 scroll up a little bit more above the horizontal
4 line.

5 AV TECHNICIAN: (Technician complies.)

6 MS. McMAHON: There, that's perfect.

7 BY MS. McMAHON:

8 Q -- there's an e-mail from August 9th,
9 2018, and that's an e-mail from you --

10 A Yes.

11 Q -- to Caryn, and you write, She did
12 called -- I think a typo -- and Tony was very
13 responsive. He did say the AFD job was in
14 Charlotte and he has no space in Asheville. I
15 proposed telework in the interim, and Cait is
16 talking to him about that. Still working on it.
17 He may apologize to you or talk about a solution,
18 and if you are comfortable you can give him your
19 views. My clear sense is that he is taking this
20 very seriously.

21 Is that right?

22 A Yes.

23 Q So did you find this information out
24 because Cait -- Cait talked to Tony, and then Cait
25 called you; is that right?

1 THE WITNESS: Oh, thank you.

2 I'm sorry, scroll down. I apologize.

3 AV TECHNICIAN: (Technician complies.)

4 THE WITNESS: There, there. That's
5 perfect.

6 Okay. And continue down.

7 AV TECHNICIAN: (Technician complies.)

8 THE WITNESS: Okay. I have finished
9 reading that, and I do recall the e-mail.

10 BY MS. McMAHON:

11 Q So if you could go to the
12 second-to-last full paragraph on page 3 that
13 starts with "The sticking point for him."

14 A Yes.

15 Q "The sticking point for him is (4)
16 transfer to Asheville duty station, as he says
17 there is no office space in Asheville," and then
18 Caryn continues on. She says that she would be
19 fine with working remotely - "especially since I
20 will be in appeals, which can be done from
21 literally anywhere."

22 So did you and Caryn discuss the
23 possibility of remote work as a solution?

24 A Yes, I think we did, and I think there
25 was a time in which she actually was doing remote

1 work, that they permitted her to do that.

2 Q And she communicated that she was fine
3 teleworking?

4 A I think she found it more favorable
5 than being in the Charlotte office with him.

6 Q Did you discuss with her teleworking as
7 a more permanent solution so that she didn't have
8 to work in Charlotte, but, again, there's no
9 office space in Asheville, so she didn't have a
10 desk there?

11 A Looking back on this, I recall being a
12 little skeptical that there was no office space in
13 Asheville.

14 Now, I don't know what the situation
15 was, I had never been there, but I've seen that
16 used as an excuse previously in -- in many other
17 cases, and I thought it was unlikely that office
18 space was -- could not be found.

19 Often in federal buildings, there are
20 multiple federal employees and multiple federal
21 positions, and I just -- that made me skeptical,
22 but --

23 Q You had no --

24 A -- I had no -- I had never been to
25 Asheville and I had never seen the offices, but it

1 seemed a little unlikely.

2 Q So if we could switch gears a little
3 bit.

4 A Sure.

5 Q Do you know who Heather Beam is?

6 A Is she in this --

7 Q She is -- we're stepping away from the
8 exhibit.

9 A Oh, okay.

10 Q It's confusing when it's on the screen.
11 No problem.

12 A Heather Beam sounds familiar, and if I
13 were -- well, I'm not going to guess. My husband,
14 who's been listening, said don't speculate, but,
15 no, I -- I recognize the name, but I don't know
16 who she is.

17 Q So she's -- would it -- would it sound
18 familiar if I told you that she was investigating
19 Plaintiff's claims -- Plaintiff's wrongful conduct
20 claim?

21 A That sounds familiar, yes.

22 Q And she was appointed as investigator
23 in August of 2018?

24 A That sounds familiar.

25 Q Do you remember contacting the

1 A No.

2 (The Reporter clarified the record.)

3 THE WITNESS: I have not.

4 BY MR. GERSEN:

5 Q Could I ask that you take a moment to
6 read it?

7 A Sure.

8 Okay. I've finished.

9 Q Okay. I just want to reference a few
10 portions of it. I'm going to ask you about them,
11 if that's okay.

12 A Uh-huh. Yes.

13 Q The e-mail says that you allegedly
14 instructed one of your staff to tell Tony Martinez
15 that he needed to give the complainant, Caryn
16 Devins, whatever it is that she is asking for,
17 telework, relocation, et cetera, before Ms. Devins
18 hires an attorney or goes to the press.

19 Do you see that portion?

20 A I do.

21 Q Have I read it accurately?

22 A You've read it accurately.

23 Q Who do you believe alleged that?

24 A I assume Tony Martinez alleged that.

25 Q Did you, in fact, instruct your staff

1 to tell Tony Martinez that he needed to give the
2 complainant whatever she was asking for?

3 A This is patently false.

4 Q Did your staff say any of those things?

5 A To my knowledge, no, and nor would they
6 ever.

7 Q Did you yourself say any of those
8 things?

9 A I did not.

10 Q Do you know how Mr. Ishida could have
11 gotten that impression?

12 A I do not.

13 Q The e-mail says that you reportedly
14 said this was not a request but an order that
15 comes from the highest levels of the AO.

16 Do you see that passage?

17 A I do.

18 Q Did you, in fact, say that?

19 A I did not, nor would I ever have said
20 something like that.

21 Q And to the best of your knowledge, did
22 any member of your staff or the AO say that?

23 A No, they did not.

24 Q So someone who reported that you or
25 your staff said that -- those things would be

1 misrepresenting the truth; is that right?

2 A Yes.

3 Q With whom outside your office did you
4 or your staff communicate about the Caryn Devins
5 matter?

6 A I want to make sure I understand.
7 With whom at the AO?

8 Q Outside -- outside the AO.

9 A Oh, outside the AO.

10 I believe that, as we mentioned
11 earlier, we talked to Heather Beam, and that was
12 Amaal Scroggins and myself.

13 I don't believe that I had any
14 conversations with the -- the Charlotte office or
15 anyone else in the courts.

16 Q And your view is that it was likely
17 that Tony Martinez was the one who was alleged
18 making those allegations?

19 A Well, reading this, yes, I -- it looks
20 like Tony Martinez is reporting this allegation.

21 Q And reporting it to Mr. Ishida?

22 A I'm assuming so, yes.

23 Q Who then reported it to Chief
24 Judge Gregory?

25 A Yes.

1 Q And do you recall the roles of Chief
2 Judge Gregory and Mr. Ishida in the EDR process?

3 A Yes. They are -- they are the --
4 basically, the -- the highest level of officials
5 in the EDR process that Caryn was involved in.

6 Q Mr. Ishida was the EDR coordinator, and
7 Chief Judge --

8 A Yes.

9 Q -- Gregory was the supervisor?

10 A Yes.

11 Q Yes. Thank you very much.

12 Given your experience in helping to
13 enforce the civil rights laws and employee --
14 protect employees from discrimination, do you have
15 a view of why someone would misrepresent
16 communications from your office in this way?

17 A Well, again, it's -- I'm speculating,
18 but I am assuming that they were not happy with my
19 position on Caryn Devins Strickland's case, and I
20 believe -- and I'm -- actually, I'm shocked to
21 read this. It's amazing what is happening behind
22 the scenes.

23 But, yeah, I mentioned earlier that one
24 of the ways that someone can try to interfere with
25 my office's function is to call one of my

1 supervisors, and Jim Duff was definitely one of my
2 supervisors. But I never knew any of this.

3 Q And why are you shocked?

4 A It is really -- first of all, because
5 it's not true, but second of all that -- that
6 there would be an attempt to interfere with the
7 role that my office had and -- and the
8 EDR process.

9 Q Mr. Ishida describes -- describes your
10 work as an interference; is that right?

11 A He says, yes, "tried to obstruct an
12 ongoing Fourth Circuit EDR investigation."

13 Q How would either -- first of all, how
14 would this be an interference with the
15 EDR process?

16 A Well, it looks like -- again, these
17 allegations are false, but that I told someone on
18 my staff to give -- to tell Tony Martinez to give
19 Caryn Devins whatever she's asking for.

20 Q More -- more straightforwardly, did you
21 try to obstruct an EDR process in any way?

22 A Absolutely not.

23 Q Would you ever try to obstruct an
24 EDR process in any way?

25 A Never.

1 Q Do you understand any of your
2 activities throughout this matter as plausibly
3 interfering or obstructing an EDR process?

4 A Absolutely not.

5 Q Okay. Could you please read the
6 sentence in the middle of the page aloud starting,
7 "After some checking"?

8 A Yes. I am reading that sentence.
9 I'm done.

10 Q Could you please read it aloud, just
11 for the record?

12 A "After some checking, Tony discovered
13 that this 'demand' did not come from the highest
14 levels of the AO, but from Ms. Dunham, who
15 coincidentally is a friend of the complainant,
16 Caryn Devins."

17 Q Were you and Caryn Devins friends at
18 this point?

19 A We were never friends.

20 Q Are you friends today?

21 A I would not call her a friend. She was
22 a person that was employed by the Federal Public
23 federal defender's Office with whom I interacted
24 on her case.

25 I liked and respected her and wanted to

1 try to resolve the matter as my job
2 responsibilities called for, but, no, she was
3 never a personal friend.

4 Q Did you know her before she came to
5 you?

6 A I never met her. I never -- I don't
7 believe I ever had any contact with her before she
8 came to me.

9 She and I were probably -- we may have
10 overlapped when she was a U.S. Supreme Court
11 Fellow, but without looking at the dates, I can't
12 say. But I never met her in that role.

13 Q Did you ever tell Tony Martinez that
14 you were friends?

15 A No, never.

16 Q Did you ever tell anyone that you were
17 friends?

18 A Never.

19 Q You said before that you were shocked
20 or found it shocking that this -- and that this
21 e-mail might interfere with the EDR process.

22 How did you mean?

23 A Well, Judge Gregory was going to be
24 deciding this case eventually, and the fact that
25 are falsehoods in here is somewhat concerning --

1 concerning.

2 Q And which falsehoods exactly?

3 A Well, that I tried to obstruct an
4 ongoing Fourth Circuit EDR investigation, that
5 this was a directive that came from the highest
6 levels of the AO, that it was a demand, and that I
7 am a friend or was a friend of the complainant.

8 Q And why would it be concerning that
9 there was a falsehood introduced about those
10 things?

11 A Well, I think the roles of Mr. Ishida
12 and Judge Gregory were as neutral adjudicators,
13 and I think having these falsehoods presented to
14 them could interfere with decisions they made in
15 the future.

16 Q You'd -- you'd be concerned that an
17 e-mail like this with clear falsehoods could
18 affect the neutrality of either Mr. Ishida or
19 Judge Gregory, both key players in the
20 EDR process; is that correct?

21 A I would be concerned retrospectively
22 and having seen this for the first time today that
23 that could have happened.

24 Q And is it reasonable to think that
25 Chief Judge Gregory receiving this communication

1 might be influenced by it in his adjudication or
2 judgments?

3 A I would be speculating if I answered
4 that question.

5 I do not know Judge Gregory personally,
6 and -- and I cannot say for sure, but even reading
7 it today, it's concerning.

8 Q Understood.

9 Given your experience with workplace
10 discrimination claims which you testified about
11 earlier, do you have a view of why someone would
12 inaccurately report that you or someone from your
13 office complaining -- and the complainant, someone
14 who was complaining about discrimination, were
15 friends?

16 I could rephrase it. That would be
17 useful.

18 Given your experience -- extensive
19 experience with workplace discrimination claims,
20 do you have a view of why someone would
21 inaccurately report that a complainant complaining
22 of workplace discrimination and you or your office
23 were friends?

24 A I would speculate that such an
25 allegation would diminish my observations about

1 the case and possibly the -- the Plaintiff's
2 observations on her own face.

3 Q So you interpret the -- that sentence
4 as undermining your own credibility and
5 legitimacy?

6 A Yes, I do.

7 Q And do you interpret that sentence as
8 undermining the legitimacy and credibility of the
9 complainant, Caryn?

10 A Yes.

11 Q And would or does this letter make you
12 concerned that someone misrepresented facts to
13 undermine the advice given by the Office of Fair
14 Employment Practices?

15 A Yes.

16 Q In your experience with workplace
17 discrimination claims, why would someone want to
18 undermine legitimacy of an interaction with the
19 Office of Fair Employment Practices?

20 A There are so many possibilities, it's
21 hard for me to answer that.

22 Q Understood. Thank you.

23 Is one reason that someone would want
24 to undermine the credibility or legitimacy of an
25 interaction with your Office of Fair Employment

1 Practices to protect an accused party in their
2 office?

3 A Yes, definitely.

4 Q Is reaching out to your office for
5 advice generally considered something that could
6 interfere in the EDR process?

7 A Absolutely not. Again, my attorneys
8 that interact regularly on a daily basis with the
9 courts and court staff have conversations about
10 cases, they provide guidance, and that is never
11 considered interference.

12 Q Is there anything wrong with a federal
13 public defender employee coming to your office for
14 advice about what to do about sexual harassment or
15 workplace discrimination?

16 A No.

17 Q Is that, in fact, what an employee of
18 the federal public defender or the judiciary ought
19 to do if they are concerned about workplace
20 discrimination?

21 A Yes.

22 Q You told Ms. McMahon that nobody told
23 you that you shouldn't be involved in this matter.

24 Seeing this e-mail, does it refresh
25 your memory on whether you were told at any point

1 A Yes.

2 Q Could you say a little bit more about
3 that?

4 You said, I think, that that was part
5 of classic sexual harassment. Could you explain a
6 bit about what you mean?

7 A Yes, and I will tell you a personal
8 anecdote that I think does illustrate it.

9 Since I have retired, I have watched a
10 lot of the news stories on sexual harassment,
11 including the allegations against Governor Cuomo
12 in New York and what led to his resigning his
13 position, and there were a number of women that
14 made allegations against him.

15 And I recall thinking when I heard
16 about them, there was a woman who alleged that he
17 groped her, so there was a physical assault, but
18 there was also another woman who alleged that he
19 had made her uncomfortable by his obvious sexual
20 and romantic interest in her.

21 There was never any groping or physical
22 assault in that case, and I remember thinking that
23 is exactly what happened with Caryn Devins. No
24 physical touching, no groping, but nevertheless
25 a -- a desire to control her and -- and an obvious

1 interest in her either sexually or romantically.

2 And I thought, boy, I -- I will say
3 this: I said to myself, I was right in this case,
4 because I did get some -- I did get some feedback
5 from one of the staff attorneys in OGC, who -- who
6 I often disagreed with, that this was not a
7 problem, that this case -- you know, I was not
8 assessing this case properly, and I remember
9 thinking, you know what, I was right.

10 Q Understood. Thank you.

11 Did Caryn ever tell you that other
12 employees observed the kind of interest in her
13 that you just described?

14 A No, never.

15 Q Okay. Thank you.

16 I want to --

17 MR. GERSEN: Could we introduce one --
18 our next exhibit, please?

19 Just give me one moment. Sorry.

20 THE WITNESS: Sure.

21 MR. GERSEN: I'm sorry, I'm having a
22 technical glitch. Just bear with me for one
23 minute. Thank you so much.

24 THE WITNESS: Sure.

25 MR. GERSEN: Okay. Could we actually

1 Q So in your --

2 A So that was my impression.

3 Q My apologies. Thank you.

4 So in your experience both in the
5 executive branch and the judicial branch, you, I
6 take it, heard a lot of these complaints of sexual
7 harassment or sex discrimination?

8 A Thousands.

9 Q Thousands?

10 And do you always believe the people
11 who come to you with these complaints?

12 A No, I do not. Just the opposite.

13 Q And say a little bit more.

14 A Well, there are people who make
15 complaints that are inherently unreliable, and --
16 and I have seen many of them.

17 When I was a judicial clerk and was
18 adjudicating -- working on adjudicating the cases,
19 I saw plaintiffs who were unreliable and I
20 believed were creating false claims.

21 I mentioned that in a deposition I
22 testified in at EPA, there was an employee who was
23 making a false claim about a sexual assault by one
24 of the EPA managers, and I testified on behalf of
25 the agency.

1 So when you -- when you -- when you
2 look at a lot of these cases over 35 years, I
3 would say the vast majority of the claims are not
4 true. So in -- in the few times when I worked at
5 the AO when I believed -- strongly believed what a
6 plaintiff was saying, those are the cases I really
7 tried to intervene and assist with what the law
8 tells us to do, which is to remedy and prevent
9 future harassment and discrimination.

10 Q And so having seen thousands of these
11 cases, you're actually more likely to disbelieve
12 the complaints than believe them?

13 A Yes, just based on numbers.

14 Q And did you believe Caryn's allegations
15 about J.P. Davis?

16 A I did. I did.

17 Q And did you believe her allegations
18 about Tony Martinez?

19 A I did.

20 Q Do you believe she was telling you the
21 truth?

22 A I do.

23 Q Do you think her concerns about her
24 workplace were reasonable?

25 A I do.

1 Q And did you feel in those conversations
2 like she was sincere?

3 A Yes.

4 Q Did you suspect that she was being
5 manipulative or deceptive?

6 A No, I did not.

7 Q Did you think Caryn was telling a false
8 story to try to get a transfer to another work
9 location?

10 A No, I did not.

11 Q Did you think she might be fabricating
12 or exaggerating things that had happened so she
13 could get to work exclusively in appeals?

14 A No, I did not.

15 Q Thank you.

16 MR. GERSEN: Can we put up Government
17 Exhibit 1, please, page 1?

18 AV TECHNICIAN: (Technician complies.)

19 MR. GERSEN: Thank you.

20 BY MR. GERSEN:

21 Q I think you said that Caryn told you
22 about ways that J.P. was asserting control; is
23 that right?

24 A Yes.

25 Q Do you remember her telling you that

1 J.P. became emotional when she told him that
2 eventually she wanted to work out of the Asheville
3 office?

4 A Emotional in -- in what way? Anger?
5 Surprise? Tearful? I need -- I need more
6 clarification.

7 Q Anger.

8 A Yes, I do remember that.

9 Q Was -- did she describe him as tearful?

10 A No.

11 Q She described him as angry when she
12 told him that she eventually wanted to move to the
13 Asheville office to work somewhere away from
14 there?

15 A Yes. And I recall a couple of examples
16 when he became very angry at her and sort of
17 lashed out at her, and, again, I -- I took that as
18 some evidence of his desire to control her and the
19 situation.

20 Q And would it have made you nervous at
21 all about Asheville as a solution to the control?

22 In other words, would simply moving
23 offices eliminate the problem if J.P. was still in
24 control and overseeing her?

25 A No, that would not have solved the

1 problem. In my mind, that employee/employer or
2 manager relationship needed to be broken, and she
3 needed to report to someone else.

4 Q Understood.

5 And just to be clear, the Government's
6 asked you to speculate a lot, but these aren't
7 your notes, correct?

8 A The notes in front of me?

9 Q Correct.

10 A They are not. They are -- from what I
11 understand, they are Caryn's notes.

12 Q So you don't actually know what Caryn
13 meant, of course?

14 A I don't. I don't. I can only make a
15 reasoned determination of what she meant.

16 But, also, part of what I see refreshes
17 my memory about that initial conversation.

18 Q Can you say a little more about that?

19 A Well, I remember -- I mean, I remember
20 telling her I was the manager of the civil rights
21 office for the federal courts and for
22 AO employees.

23 I remember telling her that I had been
24 a law clerk and that I had a number of different
25 positions over the years in civil rights and

1 the witness doesn't answer about specific advice
2 that's given.

3 Does that work?

4 MR. GERSEN: Yeah, why don't we note
5 that, and we can come back to the issue if we need
6 to at a later -- at another time.

7 BY MR. GERSEN:

8 Q So can you -- to the extent that you
9 could answer the question without revealing
10 specific advice that was -- specific legal advice
11 that was given?

12 A And what was the question again?

13 Q I think the question was: Was there
14 disagreement about how to proceed?

15 A In -- in my initial meetings, no, there
16 was not disagreement.

17 Q And what was the decision about how to
18 proceed from those initial meetings?

19 A Well, that -- that OGC would contact
20 the managers and provide counsel to them, that I
21 would continue to attempt to informally resolve
22 the matter and to give Caryn advice on the
23 processes she had at her disposal -- disposal, and
24 that we would continue to discuss.

25 Q And was there anything especially

1 unusual about that decision to proceed in that
2 way?

3 A No. It happened more times than I can
4 count.

5 Q It was very much the norm or a normal
6 way to proceed in a case like this?

7 A Exactly. And when I say countless
8 times, the managers were different. I mean, it
9 wasn't always the deputy director. It might have
10 been an office head or another manager, but that
11 was perfectly usual proceedings where OGC, my
12 office, and a manager of an office would sit down
13 and discuss next steps.

14 Q And would it be a breach of your
15 obligation or responsibilities if you hadn't done
16 so, do you think?

17 A I think it would have been.

18 Q Thank you.

19 You mentioned that you had a very
20 positive relationship with Cait Clarke, I think,
21 professionally?

22 A Yes.

23 Q And you had confidence that she would
24 do the right thing?

25 A Yes.

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Marney Alena Mederos, the officer
3 before whom the foregoing deposition was taken, do
4 hereby certify that the foregoing transcript is a
5 true and correct record of the testimony given;
6 that said testimony was taken by me
7 stenographically and thereafter reduced to
8 typewriting under my direction; that reading and
9 signing was requested; and that I am neither
10 counsel for, related to, nor employed by any of
11 the parties to this case and have no interest,
12 financial or otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set
14 my hand and affixed my notarial seal this 23rd day
15 of April 2023.

16 My commission expires November 23, 2024

17
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19 _____

20 NOTARY PUBLIC IN AND FOR
21 THE STATE OF MARYLAND
22
23
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